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In the Supreme Court of the United States

OCTOBER TERM, 1968

PAUL WALTER PEARCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
FRED M. VINSON, Jr.,
Assistant Attorney General,
BEATRICE ROSENBERG,
MERVYN HAMBURG,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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After a nonjury trial in the United States District Court for the Eastern District of Virginia, petitioner and his codefendant, Charlie Graham Gregory, were convicted of unlawful possession and removal of untaxed liquor. On December 29, 1967, petitioner was sentenced to eighteen months' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. C).

The evidence adduced at a hearing on petitioner's motion to suppress showed that on August 1, 1966, Agent McFarland of the Alcohol and Tobacco Tax Unit received information from a telephone caller, who refused to identify himself, that codefendant Gregory had moved from Norfolk, Virginia, across the

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Chesapeake Bay to Melfa, on the Eastern Shore, and was operating a distillery near Tasley, Virginia, with two other men (Tr. 66–67).[1] McFarland subsequently received about a dozen calls from this unknown person, giving additional information about Gregory, which was verified by independent investigation. The caller identified the trailer court where Gregory was residing, described the colors of Gregory's trailer, and stated that he drove a 1961 Falcon automobile. Later, the caller told McFarland that Gregory had disposed of the car and trailer, and had purchased a 1966 Ford pickup truck (Tr. 73). On several occasions, McFarland and other agents observed Gregory operating such a truck, which was registered in petitioner's name, near the suspected still site in Tasley (Tr. 69). Both petitioner and Gregory were known to McFarland as having been previously convicted of violating the federal liquor laws (Tr. 70).

Approximately one month before petitioner's arrest, agent Berge told McFarland that he had received information from the police department of Chesapeake, Virginia, near Norfolk, that Gregory was living near Melfa in a trailer camp, and that he was making whiskey there and delivering it to Norfolk. Berge said that when the truck left the Eastern Shore carrying produce, it was also carrying untaxed whiskey (Tr.

[1] Since the only contested issue was the legality of a search, and the parties acknowledged that the evidence adduced at the suppression hearing would be the same as the trial evidence, no separate hearing on the issue of guilt was conducted. Citations are to volume two of the three-volume record filed with the Clerk of this Court.

85).[2] The source of the information was an untested informant (Tr. 110).

Thereafter, McFarland asked the Chesapeake Bay Bridge-Tunnel Police to notify him when Gregory's truck went through the tunnel complex. On the evening of November 9, the truck was sighted by the Bridge-Tunnel Police headed toward Norfolk carrying a load of produce (Tr. 86). Berge and McFarland halted the truck south of Norfolk. Both Gregory (who was driving) and petitioner alighted from the cab and walked back toward McFarland's car. They met McFarland, whom they recognized, at the rear of the truck, and exchanged greetings with him. Gregory told the agent that "The only thing I got is sweet potatoes" (Tr. 64). While the agents were inspecting the rear of the truck, petitioner began to walk hurriedly toward the woods adjacent to the road. McFarland gave chase, and caught up to petitioner when he tripped on a bucket and fell (Tr. 65). When they returned to the truck, McFarland opened the passenger's door of the cab section and found an open carton containing four one-gallon jugs of untaxed liquor; two one-pint bottles of untaxed liquor were also found on the seat (Tr. 64–65).

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[2] At a post-trial hearing, the police sergeant who passed on the information to Berge testified that he had told Berge that Gregory was using the truck registered in petitioner's name to drive from the Eastern Shore to Chesapeake, but he could not recall relating anything about the significance of the truck being loaded with produce. However, this information was found in Berge's report, dated one week after petitioner's arrest (Tr. 108–109, 115–116). At the end of the hearing, the court stated that its conclusions would not be affected by this discrepancy (Tr. 131).

The sole issue raised by petitioner is whether the agents had probable cause to search the truck. The subject of agent McFarland's investigation was Gregory; petitioner's arrest, although entirely proper, was the result of his presence and conduct at the time the agents stopped the truck to arrest Gregory. Agent McFarland, who knew that Gregory had been convicted of liquor-law offenses, had received repeated telephone calls advising him that Gregory was operating an illegal still near Tasley and urging him to arrest Gregory. Although the source of this information did not identify himself, his persistence and the facts which he supplied evinced a detailed knowledge of Gregory's operation. The agent's own observations of Gregory's activities verified many of those facts and established a sound basis for believing that the information which McFarland received was accurate. *Draper* v. *United States,* 358 U.S. 307. They verified the information that Gregory had traded in his automobile for a truck, and he was seen operating that truck in the vicinity of the suspected still. When the agents learned that the truck was registered in the name of petitioner, who also was a known liquor-law violator, they had further cause to believe that Gregory had resumed his illegal activities.

In addition, the agents received information from local authorities concerning Gregory's still on the Eastern Shore and his use of the truck to drive to Norfolk. Although the source of this information was an untested informant, the information substantially corroborated the information which McFarland had received and the results of his own investigation. As

this Court said in *Jones* v. *United States,* 362 U.S. 257, 271, "Corroboration through other sources of information reduced the chances of a reckless or prevaricating tale; that [Gregory] was a known [liquor-law violator] made the charge against him much less subject to scepticism than would be such a charge against one without such a history."

The information which the agents received from two sources, corroborated by their independent investigation and their knowledge of Gregory's prior offenses, established probable cause to believe that the truck was carrying untaxed liquor. See *Jones* v. *United States, supra; Draper* v. *United States, supra; Brinegar* v. *United States,* 338 U.S. 160; *Gilbert* v. *United States,* 366 F. 2d 923, 930–931 (C.A. 9), certiorari denied, 388 U.S. 922; *Katz* v. *Peyton,* 334 F. 2d 77 (C.A. 4), certiorari denied, 379 U.S. 915; *Bass* v. *United,* 326 F. 2d 884 (C.A. 8), certiorari denied, 377 U.S. 905; *United States* v. *Irby,* 304 F. 2d 280 (C.A. 4), certiorari denied, 371 U.S. 830. See, also, *United States* v. *One 1957 Ford Ranchero Pickup Truck,* 265 F. 2d 21 (C.A. 10).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
MERVYN HAMBURG,
Attorneys.

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